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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
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KENNETH J. MURPHY  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (at Cincinnati)

**Carl Oeder & Sons Sand & Gravel Co., a  
Division of Oeder & Sons Garage  
Incorporated**

and

**Timothy Browning,**

Plaintiffs,

v

**Union Township,**

Defendant.

Case No. C-1-01-826

Judge Susan J. Dlott

**RULE 26(f) REPORT OF PARTIES'  
DISCOVERY PLAN**

Now come all parties to this case, by and through their respective counsel, and hereby jointly submit to the Court this Report of Parties' Discovery Plan. A telephone conference was held on July 10, 2002 and was attended by:

Brian P. Barger, counsel for plaintiff(s) Carl Oeder & Sons Sand & Gravel

Patricia J. Kleeberger, counsel for plaintiff(s) Carl Oeder & Sons Sand & Gravel

Patrick K. Dunphy, counsel for defendant(s) Union Township

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1. **RULE 26(A) DISCLOSURES**

- ☐ There are no changes that need to be made in the timing, form, or requirement for disclosures under Rule 26(a). All disclosures required by Rule 26(a)(1) have been made by the parties hereto or will be made by the time of the scheduled Preliminary Pretrial Conference.
- ☒ The parties agree to delay the initial disclosure until August 12, 2002. The purpose of delay is
- ☐ to give the Court time to rule on the pending dispositive motion.
- ☒ to give parties adequate time to gather documents and/or information.

2. **CONSENT TO JURISDICTION OF MAGISTRATE**

The parties:

- ☐ unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).
- ☒ do not unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).
- ☐ unanimously give contingent consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c), for trial purposes only, in the event that the assigned District Judge is unavailable on the date set for trial (e.g., because of other trial settings, civil or criminal).

3. **MOTIONS**

- A. Recommended cut-off date for filing of motions directed to the pleadings: \_\_\_\_\_  
October 1, 2002
- B. Recommended cut-off date for filing any motion to amend the pleadings and/or to add additional parties: \_\_\_\_\_  
September 1, 2002

4. **DISCOVERY ISSUES AND DATES**

A. Discovery will need to be conducted on the issues of the zoning resolution and damages.

B. The parties recommend that discovery

☒ need not be bifurcated

☐ should be bifurcated between liability and damages

☐ should be bifurcated between factual and expert

☐ should be limited in some fashion or focused upon particular issues which relate to \_\_\_\_\_

C. Disclosure of lay witnesses January 10, 2003

D. Disclosure and report of primary expert(s) by February 15, 2003

E. Disclosure and report of rebuttal expert(s) by April 1, 2003

F. Discovery cutoff May 1, 2003

G. Summary Judgment Motion June 1, 2003

H. Recommended discovery plan:

1. Describe the subjects on which discovery is to be sought and the nature, extent and scope of discovery that each party needs to: (1) make a settlement evaluation, (2) prepare for case dispositive motions and (3) prepare for trial:

Depositions with parties and any pertinent witnesses, written discovery in accordance with the Rules of Civil Procedure, and as set forth herein.

2. Describe the areas in which expert testimony is expected and indicate whether each expert has been or will be specifically retained within the meaning of Fed. R. Civ. P. 26(a)(2).

Plaintiff may require damages evaluation.  
Defendant may require accounting, economic and engineering expert testimony.

- I. Recommended date for a status conference (if any): to be determined
- J. Suggestions as to type and time of efforts at Alternative Dispute Resolution.  
The parties have attempted mediation but were unable to resolve case.
- K. Recommended date for a final pretrial conference. to be determined
- L. Has a settlement demand been made? No A response? N/A  
Date by which a settlement demand can be made: May 1, 2003  
Date by which a response can be made: June 1, 2003
- M. Other matters pertinent to scheduling or management of this litigation:  
None
- N. Anticipated discovery problems  
☒ None

3. **LIMITATIONS ON DISCOVERY**

- A. Changes in the limitations on discovery
- ☐ Extension of time limitations (currently one day of seven hours) in taking of depositions to \_\_\_\_\_.
- ☐ Extension of number of depositions (currently 10) permitted to \_\_\_\_\_.
- ☐ Extension of number of interrogatories (currently 25) to \_\_\_\_\_.
- Other: \_\_\_\_\_.
- ☒ None, subject to amendment.
- B. Protective Order: **Please note:** Parties discussed and agreed that a protective order was not needed at this time.
- ☐ A protective order will likely be submitted to the Court on or before \_\_\_\_\_.
- ☐ The parties currently do not anticipate the need for a protective order. If the



parties subsequently deem that one is necessary, they will submit a joint proposed order to the Court. Such order will be in compliance with *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F. 3d 219 (6th Cir. 1996). **Please note:** Applicability of a protective order pursuant to the *Procter & Gamble* case was not discussed during the discovery telephone conference.

4. **OTHER COURT ORDERS UNDER RULE 26(C) OR RULE 16(B) AND (C)**

- ☐ The plaintiff anticipates the need for the Court to set a deadline to allow for the amendment of the complaint to
- ☐ add parties.
- ☐ add additional claims.
- ☐ add factual allegations to support original claims(s).
- ☐ The parties anticipate the need for a Court Order under Rule 26(c) for the following reasons(s):
- ☐ There is no request for a Court Order under Rule 26(c) at this time.

**Respectfully submitted:**

For Plaintiffs:

By Brian P. Barger  
Brian P. Barger (0018908)  
**TRIAL ATTORNEY**

By Patricia J. Kleeberger  
Patricia J. Kleeberger (0070068)  
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*Attorneys for Plaintiffs Carl Oeder & Sons  
Sand & Gravel Co., A Division of Oeder & Sons  
Garage Incorporated and Timothy Browning*

For Defendants:

By per telephone consent Patrick K. Dunphy  
Patrick K. Dunphy (0017827) *Dunphy*  
**TRIAL ATTORNEY**  
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Fax: (937) 222-1414  
*Attorney for Defendant  
Union Township*

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing *Rule 26(f) Report of Parties' Discovery Plan* was sent this 11<sup>th</sup> day of July, 2002, via ordinary U.S. Mail, to Patrick K. Dunphy, Attorney for Defendants, Falke & Dunphy, LLC, 30 Wyoming Street, Dayton, OH 45409; and to Thomas M. Tepe, attorney for Plaintiffs, Keating, Muething & Klekamp, PLL, 1400 Provident Tower, One East Fourth Street, Cincinnati, Ohio 45202.

  
\_\_\_\_\_  
Patricia J. Kleeberger (0070068)